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10/622,157	07/17/2003	Warren R. White	2106-00101	1912
23505	7590	08/15/2005	EXAMINER	
CONLEY ROSE, P.C.			HAYES, BRET C	
P. O. BOX 3267			ART UNIT	
HOUSTON, TX 77253-3267			PAPER NUMBER	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/622,157
Filing Date: July 17, 2003
Appellant(s): WHITE, WARREN R.

Mark E. Scott
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 MAY 05.

Art Unit: 3644

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 12 – 17 and 32 – 34 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Art Unit: 3644

4,842,316

LERMA ET AL.

6-1989

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 12 – 17, 33 and 34 are rejected under 35 U.S.C. 102(b) as anticipated by Mollhagen. This rejection is set forth in a prior Office Action, mailed on 26 APR 04.

Claim 32 rejected under 35 U.S.C. 103(a) as being unpatentable over Mollhagen in view of Lerma et al. This rejection is set forth in a prior Office Action, mailed on 26 APR 04.

(11) Response to Argument

(Claim 12) In response to the argument that Mollhagen does not disclose **wherein the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels**, it is noted that the claims are directed to an apparatus per se, not a method of operation.

However, the claims (e.g. claim 12) contain limitations concerning the method/manner of a squeeze chute remaining stationary with respect to the set of wheels, implicitly, **during** movement of the wheels (otherwise, the device is **structurally** identical).

Note that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; and, *Ex parte Masham*, 2 USPQ2nd 1647.

See MPEP 2114, which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2nd 1647.

Art Unit: 3644

Claims directed to apparatus must be distinguished from the prior art in terms of the structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

and,

Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

(Claim 14) In response to the argument that Mollhagen does not disclose **wherein the first, second and third gates may be selectively arranged to allow egress of the animals off one of the first and second sides of the trailer after the animal exits the squeeze chute**, it is again noted that the claims are directed to an apparatus per se, not a method of operation.

However, the claims (e.g. claim 14) contain limitations concerning the method/manner of selective arrangement of the gates for allowing egress of animals.

Note that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; and, *Ex parte Masham*, 2 USPQ2nd 1647.

See MPEP 2114, which states:

A claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2nd 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of the structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

and,

Art Unit: 3644

Apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

(Claim 33) In response to the argument that Mollhagen does not disclose **and wherein the position of the squeeze chute relative to the tongue is the same for both treating animals using the squeeze chute and relocation of the trailer**, examiner disagrees. From Figs. 1 – 3, it would appear that the position of the squeeze chute relative to the tongue is the same.


(Claim 34) In response to the argument that Mollhagen does not disclose “the squeeze chute having an entrance portion and an exit portion, and wherein the exit portion faces the tongue of the trailer,” examiner disagrees. Absent any intended or desired use, the distinction of the names “entrance” and “exit” is meaningless, as any animal will both “enter” and “exit” one portion and then another.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Bret Hayes
August 7, 2005

Conferees

Michael Carone 

Robert Swiatek 

Bret Hayes 



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